



## **FACTUAL HISTORY**

On December 26, 2017 appellant, then a 48-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on May 31, 2016 he injured his right wrist and arm turning a wrench while in the performance of duty.<sup>2</sup> He stopped work from October 2 through 12, 2017 and worked intermittently from November 16, 2017 through January 23, 2018. On January 19, 2018 OWCP accepted the claim for aggravation of right wrist triangular fibrocartilage complex (TFCC) tear,<sup>3</sup> and aggravation of right wrist extensor carpi ulnaris (ECU) subluxation.<sup>4</sup>

On October 2, 2020 appellant's attending physician, Dr. Kyle R. Eberlin, a Board-certified plastic surgeon, recommended additional ulnar nerve surgery.

By decision dated November 4, 2020, OWCP denied appellant's request for authorization of right revision ulnar nerve decompression surgery.<sup>5</sup>

On December 2, 2020 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a February 10, 2021 letter, OWCP's Branch of Hearings and Review notified appellant that a telephonic hearing was scheduled for March 19, 2021 at 2:15 p.m. Eastern Standard Time (EST). The hearings representative provided appellant with a toll-free telephone number and passcode to access the hearing. The notice of hearing was mailed to him at his last known address of record. Appellant did not appear for the hearing by telephone at the appointed time and no request for postponement of the hearing was made.

By decision dated April 12, 2021, OWCP determined that appellant abandoned his request for a telephonic hearing. It noted that an oral hearing was scheduled to be conducted by telephone on March 19, 2021 and that he received written notification of the hearing 30 days in advance of the hearing. OWCP indicated that appellant failed to appear for the hearing and there was no indication in the file that he contacted OWCP either prior to or subsequent to the scheduled hearing to explain his failure to appear.

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<sup>2</sup> Appellant has a prior claim assigned OWCP File No. xxxxxx789, wherein he alleged that on May 5, 2016 he pulled a tendon in his right hand lifting a steam table in the canteen while in the performance of duty. OWCP accepted that claim for the conditions of strain of the right wrist and forearm, lesion of the right ulnar nerve, and right wrist TFCC tear. Appellant underwent decompression of the ulnar nerve and extensor tendon release in 2000 and ulnar nerve transposition in 2014. OWCP has administratively combined these files with the current file, OWCP File No. xxxxxx898 serving as the master file.

<sup>3</sup> On October 25, 2016 appellant underwent right wrist arthroscopy with TFCC debridement.

<sup>4</sup> On September 28, 2017 appellant underwent right ECU sheath reconstruction with a graft. On November 8, 2018 he underwent right ulnar shortening osteotomy and right ECU sub-sheath repair.

<sup>5</sup> On August 29, 2016 appellant underwent right revision ulnar nerve transposition. On April 9, 2018 he underwent right ulnar nerve decompression.

### **LEGAL PRECEDENT**

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>6</sup> Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.<sup>7</sup> OWCP has the burden of proving that it was properly mailed to the claimant and any representative of record.<sup>8</sup>

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.<sup>9</sup> The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.<sup>10</sup>

### **ANALYSIS**

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's November 4, 2020 decision denying appellant's request for medical treatment, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a February 10, 2021 letter, OWCP's Branch of Hearings and Review notified appellant that the hearings representative had scheduled a telephonic hearing for March 19, 2021 at 2:15 p.m. EST. OWCP properly mailed the notice to appellant's last known address of record. The Board has held that absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule.<sup>11</sup> Appellant failed to call-in for the scheduled hearing using the provided telephone number. He did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. As appellant did not request a postponement, call-in to the scheduled hearing, or provide notification to OWCP's

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<sup>6</sup> 20 C.F.R. § 10.616(a).

<sup>7</sup> *Id.* at 10.617(b).

<sup>8</sup> *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *A.R.*, Docket No. 19-1691 (issued February 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>9</sup> *Supra* note 6 at § 10.622(f).

<sup>10</sup> *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011); *see also L.T.*, Docket No. 20-1539 (issued August 2, 2021); *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>11</sup> *See V.C.*, *supra* note 8; *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

Branch of Hearings and Review within 10 days of the scheduled hearing explaining his failure to appear, he abandoned his request for an oral hearing.<sup>12</sup>

On appeal appellant asserts that he did not receive the February 10, 2021 letter scheduling the oral hearing. As explained above, the Board finds that the mailbox rule applies as all documents were mailed by OWCP to appellant's address of record.<sup>13</sup> Appellant did not submit evidence of nondelivery of OWCP's hearing notice such that the presumption of receipt would be rebutted. The Board, therefore, finds that appellant abandoned his request for an oral hearing.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 12, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> See *supra* note 10; see also *R.S.*, Docket No. 15-1358 (issued December 4, 2015).

<sup>13</sup> *Supra* note 11.